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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,966	10/28/2003	Isabelle Rollat	5725.0756-01	3769
22852 7590 06/29/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER VAKILI, ZOHREH	
			ART UNIT 1614	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/693,966	Applicant(s) ROLLAT ET AL.	
	Examiner Zohreh Vakili	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 15-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :10/28/2003, 04/30/2004, 06/20/2005, 07/26/2005.

DETAILED ACTION

Claims 1-16 are presented for examination.

Applicant's response to the restriction requirement filed on May 10, 2007 is acknowledged. Accordingly, Applicants elect Group I the composition with traverse. Applicants for election of species elects an acrylic copolymer comprising 2-ethylhexyl acrylate monomers, isobornyl acrylate monomers and methacrylic acid monomers. As a vehicle, Applicants elect water and as an additional polymer Applicant elects a polymer formed from 2-ethylhexyl acrylate monomers, isobornyl acrylate monomers and acrylic acid monomers. Applicants argue that the Examiner has not shown that search and examination of the present claims would constitute an undue burden and that the composition and the method of cosmetically treating hair significantly, if not entirely, overlap. Examiner does not agree because the product can be used in delivery system other than the hair care composition and is, therefore, not limited by such a use. Therefore, the restriction requirement between the two groups is still deemed proper and is made final. Claims 15 and 16 are withdrawn from consideration as being directed to non-elected subject matter. Claims 1-14 read on the elected invention and are herein examined on the merits.

Applicants' submission of Information Disclosure Statements (IDS) filed October 28, 2003, April 30, 2004, June 20, 2005, and July 26, 2005 have been received and entered into the present application.

Claim Rejection(s)—35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midha et al. (US Patent No. 6689346 B1).

Midha et al. disclose personal care compositions, such as haircare, cosmetic and nail compositions containing linear toughened silicone grafted polymers (see abstract). The desire to have the hair retain a particular shape is widely held. The most common methodology for accomplishing this is the application of a styling composition to dampened hair, after shampooing and/or conditioning, or to dry, styled hair. These

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compositions provide temporary setting benefits and they can be removed by water or by shampooing. The materials used in the compositions to provide the setting benefits have generally been resins and have been applied in the form of mousses, gels, lotions or sprays (see col. 1, lines 22-31). Recently, it has become known to utilize silicone grafted organic backbone polymers in various personal care compositions including their use as hair setting agents in hairspray compositions and other hair styling compositions, e.g. hair tonics, lotions, rinses, mousses, etc. Silicone grafted polymers can be used to make personal care compositions with improved feel, e.g., in the case of hair sprays, increased softness relative to conventional polymeric hair setting agents (col. 1, lines 43-51). The present invention relates to a personal care composition comprising: (a) a silicone grafted adhesive polymer, said polymer being characterized by an organic polymeric backbone wherein said backbone comprises (i) at least one monomer wherein when said monomer is polymerized as a homopolymer having a T_g of from about -120 degree C to about 25 degree C. and (ii) at least one monomer wherein when said monomer is polymerized as a homopolymer having a T_g of from above about 25 degree C to about 250 degree C wherein said silicone grafted adhesive polymer has silicone macromers grafted to said backbone and wherein the number average molecular weight of said silicone macromers is greater than about 1000; and (b) a personal care carrier (see col. 2, lines 12-23). This silicone containing hair styling polymer is preferably colloidally dispersed or solubilized in any applicable carrier (see col. 2, lines 47-50). The monomer units can be derived from hydrophilic monomers (typically polar monomers), or mixtures of such hydrophilic monomers with

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hydrophobic monomers (typically low polarity monomers), provided that the solubility characteristics of the overall copolymer is achieved. As used herein, "hydrophilic monomers" means monomers which form homopolymers which are substantially water soluble; hydrophobic monomers" means monomers which form substantially water insoluble homopolymers (col. 4, lines 15-23). Nonlimiting classes of monomers useful herein include monomers selected from the group consisting of unsaturated alcohols, unsaturated monocarboxylic acids, unsaturated dicarboxylic acids, unsaturated anhydrides, alcohol esters of unsaturated monocarboxylic acids, alcohol esters of unsaturated dicarboxylic acids, alcohol esters of unsaturated anhydrides, alkoxyated esters of unsaturated monocarboxylic acids, alkoxyated esters of unsaturated dicarboxylic acids, alkoxyated, esters of unsaturated anhydrides, aminoalkyl esters of unsaturated monocarboxylic acids, aminoalkyl esters of unsaturated dicarboxylic acids, aminoalkyl esters of unsaturated anhydrides, amides of unsaturated monocarboxylic acids, amides of unsaturated dicarboxylic acids, amides of unsaturated anhydrides, salts of unsaturated monocarboxylic acids, salts of unsaturated dicarboxylic acids, salts of unsaturated anhydrides, unsaturated hydrocarbons, unsaturated heterocycles, and mixtures thereof (see col. 4, lines 24-41). Representative examples of such monomers include acrylic acid (col. 4, lines 42-43). Preferred monomers include acrylic acid, methacrylic acid (col. 5, lines 16-17). From the above descriptions, esters of acrylic and methacrylic acid that form low T_g homopolymers include, for example, 3-methoxybutyl acrylate, 2-methoxyethyl acrylate, 2-phenoxyethyl ester, 2-hydroxyethyl ester, 4-hydroxybutyl acrylate, 2-ethoxyethoxyethyl acrylate, 2-ethoxyethyl acrylate, n-

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butyl acrylate, dodecyl acrylate, **2-ethylhexyl acrylate** (col. 5, lines 27-33). Most preferred monomers which form low Tg homopolymers include 2-methoxyethyl acrylate, n-butyl acrylate, ethyl acrylate. These low Tg monomers preferably have Tg of from about -70 degree C to about 25 degree C, more preferably from about -60 degree C to about 0 degree C and most preferably from about -60 degree C to about -20 degree C (see col. 5; lines 57-62). From the above descriptions, acrylic and methacrylic acids and esters thereof that form high Tg homopolymers include, for example, sec-butyl methacrylate, t-butyl acrylate, methyl methacrylate, isopropyl methacrylate, 2-t-butylaminoethyl methacrylate, dimethyl aminoethyl methacrylate, quaternized dimethyl aminoethyl methacrylate, 4-biphenyl acrylate, pentachlorophenyl acrylate, 3,5-dimethyladamantyl acrylate, 3,5-dimethyladamentyl methacrylate, **isobornyl acrylate**, trimethysilyl methacrylate, trimethylsilyl acrylate (silyl esters could be hydrolysed to form acrylic or methacrylic acids), **acrylic acid**, methacrylic acid, salts of acrylic and methacrylic acids; Acrylamide & methacrylamide monomers including N-butylacrytlamide, acrylamide, N-isopropylacrylamide, N-t-butylmethacrylamide; Vinyl monomers including: 2-vinylpyridine, 4-vinylpyridine, vinyl acetate, vinyl chloride, N-vinylcaprolactam, N-vinyl pyrrolidone, cyclohexyl vinyl ether, vinyl alcohol, vinyl imidazole; Styrene monomers including: styrene, 4-t-butylstyrene, 2-methoxystyrene, 4-acetylstyrene, styrene sulfonate. Other monomers that form high Tg homopolymers include: diallyldimethylammonium chloride, maleimides, crotonic acid, itaconic acid, maleic anhydrides, allyl alcohol, .alpha.-pinene, .beta.-pinene, tert-butyl styrene, .alpha.-methyl styrene, indene, norbornene, norbornylene (see col. 6, lines 1-19).

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Preferred monomers which form high Tg homopolymers include: t-butyl methacrylate, t-butyl acrylate, methyl methacrylate, dimethyl aminoethyl methacrylate, isopropyl methacrylate, trimethylsilyl methacrylate, trimethylsilyl acrylate, **acrylic acid** (see col. 6, lines 20-27). Most Preferred monomers which form high Tg homopolymers include: t-butyl methacrylate, t-butyl acrylate, methyl methacrylate, acrylic acid, methacrylic acid, salts of acrylic and methacrylic acids, tert-butyl styrene. These high Tg monomers preferably have Tg of from above about 25 degree C to about 250 degree C, more preferably from about 30 degree C to about 200 degree C, even more preferably from about 35 degree C to about 150 degree C, and most preferably from about 40 degree C to about 130 degree C (see col. 6, lines 28-37). The copolymers of the present invention comprise from about 2% to about 50%, preferably from about 5% to about 40%, and more preferably from about 10% to about 30%, by weight of the copolymer of polysiloxane macromonomer units (see col. 6, lines 38-42). Exemplary silicone grafted polymers for use in the present invention include the following, where the composition is given as weight part of monomer used in the synthesis: (i) poly(t-butyl acrylate-co-n-butyl acrylate-co-acrylic acid-co-methacrylic acid)-graft-poly(dimethylsiloxane) MWt of copolymer: 210,000 Composition: t-butyl acrylate (36%), n-butyl acrylate (27%), **acrylic acid (12%)**, methacrylic acid (10%), poly(dimethylsiloxane) (15%) MWt of poly(dimethylsiloxane): 10,000; (ii) poly(t-butyl acrylate-co-ethyl acrylate-co-acrylic acid)-graft-poly(dimethylsiloxane) MWt of copolymer: 100,000 Composition: t-butyl acrylate (34%), ethyl acrylate (35%), **acrylic acid (21%)**, poly(dimethylsiloxane) (10%)

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MWt of poly(dimethylsiloxane): 5,000; (iii) poly(t-butyl acrylate-co-n-butyl acrylate-co-acrylic acid)-graft-poly(dimethylsiloxane) MWt of copolymer: 150,000 Composition:

t-butyl acrylate (47.25%), n-butyl acrylate (22.75%), **acrylic acid (20%)**,

poly(dimethylsiloxane) (10%) MWt of poly(dimethylsiloxane): 10,000; (iv) poly(t-butyl acrylate-co-2-methoxyethyl acrylate-co-methacrylic acid)-graft-poly(dimethylsiloxane)

MWt of copolymer: 100,000 Composition: t-butyl acrylate (27%), 2-methoxyethyl acrylate (43%), methacrylic acid (20%), poly(dimethylsiloxane) (10%) MWt of

poly(dimethylsiloxane): 15,000; (v) poly(t-butyl acrylate-co-isobornyl acrylate-co-2-methoxyethyl acrylate-co-acrylic acid)-graft-poly(dimethylsiloxane) MWt of copolymer:

95,000 Composition: t-butyl acrylate (33%), isobornyl acrylate (17%), 2-methoxyethyl acrylate (20%), acrylic acid (20%), poly(dimethylsiloxane) (10%) MWt of

poly(dimethylsiloxane): 10,000 (vi) poly(t-butyl acrylate-co-lauryl methacrylate-co-acrylic acid)-graft-poly(dimethylsiloxane) MWt of copolymer: 125,000 Composition: t-butyl acrylate (60%), lauryl methacrylate (10%), **acrylic acid (20%)**,

poly(dimethylsiloxane) (10%) MWt of poly(dimethylsiloxane): 15,000 (see col. 8, lines 6-53). Representative Tg's for monomers in the exemplary silicone grafted polymers

described above are as follows: The Tg of t-butyl acrylate is 44.85 degree C; the Tg of n-butyl acrylate is -54.15 degree C; **the Tg of acrylic acid is 105.85 degree C**; the Tg

of methacrylic acid is 227.85 degree C; the Tg of ethyl acrylate is -24.15 degree C; the Tg of lauryl methacrylate is -65.15 degree C (see col. 8, lines 60-64). Hair spray

compositions typically comprise a polar solvent phase as a liquid vehicle for the silicone grafted polymer. The polar solvent phases comprise one or more polar

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solvents that are present in the hair care compositions at a level of from about 80% to about 99%, preferably from about 85% to about 98%, more preferably from about 90% to about 95% of the total composition (see col. 9, lines 25-31). The polar solvents essential to the present compositions are selected from the group consisting of water (see col. 9, lines 32-33). Where water and alcohol mixtures are used, for instance, water-ethanol or water-isopropanol-ethanol, the water content of the compositions is generally in the range of from about 0.5% to about 99%, preferably from about 5% to about 50% by weight of the total composition. In such mixtures, the alcohol solvents are generally present in the range of from 0.5% to about 99%, preferably from about 50% to about 95%, by weight of the total composition (see col. 9, lines 42-49). In yet another aspect of this invention are provided hair styling products, such as hair spray compositions, which contain reduced levels of volatile organic solvents. A reduced volatile organic solvent hair spray composition of the present invention contains no more than 80% volatile organic solvents (see col. 9, lines 50-54). In the reduced volatile organic solvent hair styling products hereof, the compositions generally comprise at least 10%, by weight, of water. It is also specifically contemplated that they may contain at least about 11%, 12%, 13%, 14%, 15%, or more water (see col. 9, lines 59-63). Shampoos and rinse compositions typically comprise a volatile, nonpolar, branched chain hydrocarbon and is safe for topical application to the skin and hair. The branched chain hydrocarbon solvent hereof is present at a level of from about 0.1% to about 15%, preferably from about 0.5% to about 10%, more preferably from about 2% to about 8%, by weight of the composition. Also useful are low boiling point

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silicone oils (see col. 10, lines 6-13). The branched chain hydrocarbon solvents are selected from the group consisting of C_{10} – C_{14} branched chain hydrocarbons, and mixtures thereof, preferably C_{11} – C_{13} branched chain hydrocarbons, more preferably C_{12} branched chain hydrocarbons. Saturated hydrocarbons are preferred, although it isn't necessarily intended to exclude unsaturated hydrocarbons (col. 10, lines 21-27).

Solubility of the adhesive polymer, as described above, should be determined after neutralization, if any, as well as after addition of other ingredients that may be included in the polar solvent phase, such as surfactants, solubilizers, etc. (see col. 11, lines 64-67). The present compositions can contain a wide variety of **additional** optional **ingredients**, including among them any of the types of ingredients known in the art for use in hair setting compositions, especially hair spray compositions and hair setting tonics. These ingredients include, but are not limited to, surfactants (including fluorinated surfactants and **silicone copolyols**), and ionic strength modifiers, **propellants**, hair conditioning agents (e.g., silicone fluids, fatty esters, fatty alcohols, long chain hydrocarbons, **cationic surfactants**, etc.) (see col. 12, lines 1-10). The upper limit of the ionic strength modifier system level will vary depending upon the particular ionic strength modifiers, liquid vehicle, resin, and other ingredients present in the composition (see col. 12, lines 25-38). The ionic strength modifier system comprises a mixture of monomeric cations and anions (see col. 12, lines 39-40). When the hair spray compositions are to be dispensed from a pressurized aerosol container, a propellant which consists of one or more of the conventionally-known aerosol propellants may be used to propel the compositions. A suitable propellant for use can

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be generally any liquifiable gas conventionally used for aerosol containers (see col. 13, lines 55-61). The aerosol propellant may be mixed with the present compositions and the amount of propellant to be mixed is governed by normal factors well known in the aerosol art. Generally, for liquifiable propellants, the level of propellant is from about 10% to about 60% by weight of the total composition, preferably from about 15% to about 40% by weight of the total composition (see col. 14, lines 5-11). Other suitable aerosol dispensers are those characterized by the propellant being compressed air which can be filled into the dispenser by means of a pump or equivalent device prior to use (see col. 14, lines 18-22). Compressed air aerosol containers suitable for use are also currently marketed by The Procter & Gamble Company under their tradename VIDAL SASSOON AIRSPRAY.RTM. hair sprays (see col. 14, lines 18-29).

Conventional non-aerosol pump spray dispensers, i.e., atomizers, can also be used (see col. 14, lines 31-32). Other hair styling compositions include tonics and lotions, which are typically dispensed in a conventional bottle or tube, and applied directly to the hair or first dispensed to the hand and then to the hair (see col. 14, lines 33-37).

The hair styling formulations of the present invention can optionally contain conventional hair care composition adjuvants. Generally, adjuvants collectively can comprise from about 0.05% to about 5% by weight and preferably from about 0.1% to about 3%, by weight. Such conventional optional adjuvants are well known to those skilled in the art and include in addition to those discussed above, emollients; lubricants and penetrants such as various lanolin compounds; protein hydrolysates and other protein derivatives; ethylene adducts and polyoxyethylene cholesterol; dyes,

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tints, bleaches, reducing agents and other colorants; pH adjusting agents sunscreens; preservatives; thickening agents (e.g. polymeric thickeners, such as xanthan gum); and perfume (col. 14, lines 38-51). The compositions of the present invention are used in conventional ways to provide the personal care compositions of the present invention. Such method generally involves application of an effective amount of the product. For example, in a hair spray composition, said composition is applied to the desired dry, slightly damp, or wet hair before and/or after the hair is arranged to a desired style. The composition is then dried or allowed to dry. By "effective amount" is meant an amount sufficient to provide the desired benefits (see col. 14, lines 61-67 & col. 15, lines 1-3).

Clearly, one having ordinary skill in the art would have been motivated to use the teachings of Midha et al. the hair care composition useful for styling. The materials used in the compositions have been applied in the form of mousses, gels, lotions, or sprays. Midha et al. teaches at least one low Tg monomer (of which 2-ethylhexylmethacrylate is taught) and at least one high Tg monomer (of which methacrylic acid and isobornyl acrylate are each specifically taught) in combination with the silicone grafted organic backbone polymers that Midha et al. teaches, and, thus, this combination would meet claim 10's limitation reciting "wherein the composition further comprises at least one additional polymer" and the species election of an additional polymer formed from 2-ethylhexyl acrylate monomers, isobornyl acrylate monomers and acrylic acid monomers.

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Midha et al. uses additional ingredients such as surfactants (including fluorinated surfactants and **silicone copolyols**), and ionic strength modifiers, silicone fluids, and **cationic surfactants**.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teachings of Midha et al. for the reshapable hair styling composition.

Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and as a whole, prima facie obvious.

Double Patenting

Obviousness-Type

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of US Patent No.

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An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claims because the examined claim is either anticipated by, or would have been obvious over, the reference claims.

In this case, the reference claims recite a reshapable hair styling composition. The composition comprises of one acrylic copolymer, and additional ingredients such as surfactant. The composition is in the form of a spray, aerosol, mousse, gel, or lotion. The copolymer has a Tg from about -100 degree C. to about 15 degree C. The present claims are drawn directly to a composition comprising of one acrylic copolymer and additional ingredients such as surfactant. The composition is in the form of a spray, aerosol, mousse, gel, or lotion. The copolymer has a Tg from about -100 degree C. to about 15 degree C. The components of the composition are present in the same amount. The components of the compositions are identical and so is its use. Such subject matter of the present claims directly conflicts with the subject matter of the reference claims and is not considered to be patentably distinct.

Thus, claims 1-16 are not considered to be patentably distinct over claims 1-11 of US Patent No. 6689346 B1, and are properly rejected under the judicially created doctrine of obviousness-type double patenting as being obvious and unpatentable variants.

Conclusion

No claims of the present application are allowed.

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Any inquiry concerning this communication should be directed to Zohreh Vakili, telephone number 571-272-3099. The examiner can normally be reached from 8:30 a.m. to 5:00 p.m., Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili
Patent Examiner
Art Unit 1614

June 18, 2007

hA/V
25 JUN 07

Ardin H. Marschel 6/25/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER

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